

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

United States Courts  
Southern District of Texas  
ENTERED

NOV 13 2003

In re ENRON CORPORATION  
SECURITIES, DERIVATIVE &  
"ERISA" LITIGATION

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§

MDL No. 1446 Michael N. Milby, Clerk of Court

MARK NEWBY, et al.,

§

Plaintiffs,

§

§

vs.

§

CIVIL ACTION NO. H-01-3624

CONSOLIDATED CASES

ENRON CORPORATION, et al.,

§

Defendants.

§

**CONFIDENTIALITY ORDER**

IT IS HEREBY ORDERED as follows:

1. This Confidentiality Order sets forth the procedures that shall govern the production of all Confidential Material by Credit Suisse First Boston LLC, Credit Suisse First Boston (USA), Inc. and Pershing LLC (collectively, for purposes of this order, "CSFB") in the above-referenced action, including all cases within MDL No. 1446 and coordinated cases (collectively, the "Action"), as well as the use of such Confidential Material by the parties to the Action.

2. "Material" or "Materials" shall mean documents, responses to interrogatories, requests for admissions, deposition transcripts, and any other information, objects or things which have been or will be produced by CSFB in the Action, as well as any and all copies, abstracts, digests, summaries and by-products thereof. The term "documents" as used in this Confidentiality Order is intended to encompass both documents (including any form of magnetic or electronic storage media) and physical things.

3. "Confidential Material" shall mean all material designated as "Confidential" which will be produced or otherwise disclosed in connection with this action.

4. CSFB may designate material containing the following categories of information as "Confidential Material":

- (a) personnel files and other personal information of current and former CSFB employees;
- (b) personal information of CSFB's individual clients.

5. The designation of materials produced in discovery as Confidential for purposes of this Order shall be made in the following manner:

a. with respect to documents (apart from depositions or other pre-trial testimony and interrogatory responses), by affixing the legend "CONFIDENTIAL" to each page containing any Confidential Material;

b. with respect to depositions or other pre-trial testimony, either by a statement on the record, by counsel, at the time of disclosure, or by notifying counsel for all other parties in writing (and either delivered by hand or transmitted by facsimile or e-mail), within thirty (30) days after receipt by counsel for the deponent or witness of the transcript of such deposition or other pre-trial testimony that all or portions of the deposition or pre-trial testimony contain Confidential Material. The legend "CONFIDENTIAL" shall be affixed to the first page of the original transcript of any deposition or other pre-trial testimony containing Confidential Material, and to the first page of all copies of such transcript. Only those portions of each transcript designated as Confidential in the Action shall be deemed Confidential. All transcripts of depositions or other pre-trial testimony shall be deemed to be Confidential until the end of the thirtieth

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day after receipt by counsel for the deponent or witness of the transcript of such deposition or other pre-trial testimony;

c. with respect to interrogatory responses, by stating in the interrogatory response that it contains Confidential Material. Only those interrogatory responses designated as "CONFIDENTIAL" in this action shall be deemed Confidential; and

d. with respect to audio or video recordings, or other materials which cannot be labeled in the manner described in subparagraph (a), by notifying counsel for all other parties in writing within 60 days of the date of the deposition.

6. All Confidential Material shall be used exclusively for the purposes of the preparation and conduct of discovery, motions, hearings, trials, or appeals (including retrials) in the Action. Accordingly, all Confidential Material, and the contents thereof, shall not be disclosed to anyone other than those persons and parties described in paragraph 8 hereof, and to the Court in accordance with paragraph 9 hereof, unless the Court compels such disclosure. Moreover, all Confidential Material, and the contents thereof, shall not be used for any other purposes, including without limitation, for any business, commercial or competitive purposes, except with the prior written consent of CSFB.

7. Any party may utilize Confidential Material at depositions conducted in connection with any subpoena, notice of deposition or Court Order served or issued in the Action. With respect to any such deposition, any portions of the transcript of such deposition referencing the content or text of Confidential Material, and any exhibits to such transcript containing Confidential Material, shall be treated as Confidential Material and shall not be disclosed to any person or entity other than the persons identified in paragraph 8 below, under the procedures outlined therein.

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8. Except upon the prior written consent of CSFB, parties to whom Confidential Material is disclosed shall not disclose such Confidential Material to any person other than:

a. The party's counsel (including in-house counsel participating in litigation of the Action) and their legal, clerical, or support staff, including temporary or contract staff;

b. The party's (including corporate affiliates') present or former officers, directors, trustees, or employees, whose review of the Confidential Material is necessary for the prosecution or defense of the Action;

c. Expert witnesses or consultants who are employed or retained by a party in connection with the Action, provided that counsel, in good faith, requires their assistance in connection with the Action, further provided that any report created by such expert or consultant relying on or incorporating Confidential Material in whole or in part shall be designated as Confidential Material;

d. Deponents and witnesses in accordance with Paragraph 7 above;

e. Potential trial or deposition witnesses, and their counsel, when such disclosure is reasonably necessary for the purposes of trial preparation, factual investigation or discovery; and

f. Any document depository administrator and outside copy and computer services personnel for purposes of copying, imaging, or indexing documents.

Confidential Material shall not be disclosed to any person identified in subparagraphs (b), (c), (d) and (e) above unless and until such person has (i) been shown a copy of this Order and has been instructed that he or she is bound by its terms, and (ii) agreed in writing to be bound by the terms of this Order by signing the written Affirmation attached as Exhibit A; provided,

however, that this Affirmation provision shall not apply to deponents or witnesses who are (i) present or former directors, trustees or employees of CSFB, or (ii) original authors or original recipients of the Confidential Material. A copy of such signed Affirmation shall be retained by counsel for the party making disclosure and must be shown to counsel for CSFB upon a showing of good cause.

9. If any party to this Order wishes to submit any Confidential Material to the Court before which the Action is pending, such Confidential Material shall plainly state on the first page of any bound or stapled set, "CONFIDENTIAL -- FILED UNDER SEAL", and shall be filed only in sealed envelopes on which shall be endorsed the caption of this action, and a statement substantially in the following form:

CONFIDENTIAL

This envelope contains documents that are subject to an Order Governing Confidential Material entered by the Court in this action. The contents of this envelope shall not be revealed except to the Court and employees of the Court except by order of the Court.

10. If a party concludes that it has been compelled, by subpoena or other form of judicial process, to disclose Confidential Material to any person other than those permitted by Paragraph 8 above, the party shall as promptly as possible, and in any event at least fourteen (14) days prior to disclosure or 72 hours prior to the return date of a subpoena or other process in the event of process requiring compliance in fewer than 14 days, whichever is the longer period, provide written notice to counsel for CSFB of the party's intention to disclose Confidential Material. If written notice cannot be provided at least fourteen (14) days prior to the time for production or other disclosure, the party shall, in addition, give notice to counsel for CSFB by telephone. In no event shall production or disclosure be made before reasonable notice is

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given to counsel for CSFB. The purpose of this paragraph is to give CSFB an opportunity to intervene to object to the production or disclosure of Confidential Material pursuant to compulsory process. If CSFB seeks a court order precluding production or disclosure of such material, the party from which production or disclosure is sought shall not make production or disclosure until the court rules on CSFB's request.

11. Any party may request at any time permission to disclose Confidential Material to a person other than those permitted by Paragraph 8 by serving a written request upon counsel for CSFB. The request shall state the information or material the party wishes to disclose and the person or entity to whom the party wishes to disclose the information or material. If consent is withheld, or if the parties are unable to agree on the terms and conditions of disclosure, the party seeking to make disclosure may, after reasonable notice to CSFB, move for an order from the Court permitting the disclosure. While such an application is pending, the document, testimony or other information in question shall be treated as Confidential, as designated by CSFB.

12. Nothing in this Order shall prevent CSFB from using or disclosing its own documents or information. In addition, nothing in this Order shall be construed in any way to control the use by a party of documents or information received at any time by that party outside the course of the discovery process in the Action.

13. Inadvertent failure to designate material as Confidential Material at the time of production may be remedied by supplemental written notice. If such notice is timely given, all documents, materials or testimony so designated shall be fully subject to this Order as if they had been initially so designated as Confidential Material.

14. If material or information subject to a claim of attorney-client privilege, attorney work product, or any other legal privilege or basis protecting information from discovery is

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inadvertently produced by CSFB, such production shall in no way prejudice or otherwise constitute a waiver of, or estoppel as to, any claim of privilege, work product or other basis for withholding production to which CSFB would otherwise be entitled. Upon notice by CSFB, if a claim of inadvertent production is made pursuant to this Paragraph, all parties promptly shall return to CSFB the inadvertently produced material and all copies or reproductions thereof, shall destroy all notes or other work product reflecting the contents of such material, and shall delete any electronic copies of such material. However, for purposes of preparing a motion under the next sentence, the party who received such material may, before return or destruction of it, make a record of sufficient information as would normally be contained in a privilege log. Any interested party may then move the Court for an Order compelling production of the material, but such motion shall not rely upon in any manner or assert as a ground for entering such an Order the fact or circumstances of the inadvertent production.

15. A party's compliance with the terms of this Order shall not operate as an admission that any particular document or information is or is not confidential or privileged.

16. In the event that any Confidential Material is used in any Court proceeding in the Action or any appeal therefrom, such material shall not lose its status as Confidential Material through such use, and the party using said information shall take all steps necessary to protect its confidentiality during such use, including, but not limited to, requesting the Court to hear counsel with respect to such information *in camera*.

17. Subject to the Federal Rules of Evidence, Confidential Material may be disclosed at trial or at a hearing in open court. Any party intending to use Confidential Material shall notify CSFB of the listing as a trial exhibit of documents or other information containing Confidential Material within one day after so listing such documents. Where the use of

Confidential Material would be made to a witness from a different party or third party or where the Confidential Material to be used was not listed on the trial exhibit list, the party disclosing the Confidential Material must provide 24 hours advance notice (or, if that is not possible, as much advance notice as is practicable in the circumstances) to counsel for CSFB.

18. Nothing herein shall prevent any party from seeking further, greater or lesser protection with respect to the use of any Confidential Material in connection with any trial, hearing or other proceeding in the Action.

19. Nothing herein shall be construed to affect in any way the admissibility of any document, testimony or other evidence at trial of the Action.

20. Nothing herein shall affect any person's right to object to any discovery request, including the right to assert that no discovery should be had of certain documents or information. Nor shall anything herein affect any person's right to seek the production of documents, testimony or other information from any other source.

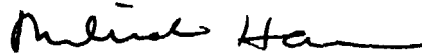
21. Nothing herein shall affect Lead Plaintiff's right to challenge by motion, at any time, the designation of a particular document by CSFB as "Confidential", nor shall anything herein shift the burden to Lead Plaintiff to prove that a particular document is not confidential.

22. All Confidential Material and copies thereof (other than copies of documents filed under seal with the Court) shall be returned to CSFB or else destroyed within forty-five (45) days of a final adjudication (including any appeals) or other termination of the Action.



23. This Order shall survive the termination of the Action and shall continue in full force and effect thereafter.

SO ORDERED:



MELINDA HARMON  
UNITED STATES DISTRICT JUDGE  
SOUTHERN DISTRICT OF TEXAS

Dated: 12 November, 2003

EXHIBIT A

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In Re ENRON CORPORATION	§	
SECURITIES, DERIVATIVE &	§	MDL No. 1446
"ERISA" LITIGATION	§	
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MARK NEWBY, et al.,	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL ACTION NO. H-01-3624
		CONSOLIDATED CASES
ENRON CORPORATION, et al.,	§	
Defendants.	§	
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AFFIRMATION

The undersigned hereby affirms, under penalty of perjury as follows:

1. I have read and understand the Confidentiality Order entered in the above-captioned Action.
2. I agree to be bound by all of the terms of the Confidentiality Order including, but not limited to, the requirements that I not disclose, directly or indirectly, Confidential Material other than in accordance with the terms of the Confidentiality Order.

3. I agree for purposes of enforcing the Confidentiality Order to submit to the jurisdiction of the court before which the Action is pending.

Name: \_\_\_\_\_  
(Please Print)

Signature: \_\_\_\_\_

Date: \_\_\_\_\_